

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 26, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:08HD-126

HAWAII

Set-Aside to the County of Hawaii for Mahukona Beach Park and Issuance of
Management Right-of-Entry at Kaoma, North Kohala, Hawaii, Tax Map Key:
(3) 5-7-003:013

APPLICANT:

County of Hawaii.

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Government lands situated at Kaoma, North Kohala, Hawaii, identified by Tax Map Key:
(3) 5-7-003:013, as shown on the attached map labeled Exhibit A.

AREA:

14.96 acres, more or less.

ZONING:

State Land Use District: Conservation and Agriculture
County of Hawaii CZO: A-5a

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

The County of Hawaii has operated a portion of the land as a County Park for more than 50 years. Land Office Deed S-27,755, by which the State acquired the subject land, lists two encumbrances on the property: 1) Roadway Easement 1 in favor of the United States of America for access to the Mahukona Lighthouse parcel (TMK (3) 5-7-003:015); and Roadway Easement 2.

PURPOSE:

County park.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

A portion of the subject land has been used by the County for the Mahukona Beach Park since approximately 1954, originally under leases with the prior landowners who included Kohala Sugar Co./Castle & Cooke, and Kohala Corporation. The Mahukona Boat Landing immediately to the north of the subject land was set aside to the County under Executive Order No. 1307 dated January 28, 1949 for recreational purposes. See map attached as Exhibit A.

The State acquired the subject land under Land Office Deed S-27,755 dated May 25, 1989, made by Chalon International of Hawaii, Inc., as grantor, to the State of Hawaii, as grantee. The land was conveyed to the State as part of a land exchange to settle quiet title litigation commenced by Kohala Corporation against Elena Callish, et al., Civil No. 5467. The Board approved the settlement under Item F-9 of its meeting of September 11, 1987.

By letter dated July 11, 2008, County of Hawaii Mayor Harry Kim requested the set-aside of the subject land to formalize the County's stewardship of Mahukona Beach Park, noting that similar requests were made in 1991 and 1999.

A management right-of-entry issued to the County of Hawaii will allow the County to continue to operate Mahukona Beach Park and investigate potential expansion of the park on the land pending the issuance of the requested executive order.

On July 21, 2008, Land Division requested approval of the proposed set-aside from the Department of the Attorney General due to the ceded land status of the subject parcel. The Department of the Attorney General approved the proposed disposition by memorandum dated July 29, 2008.

By memorandum dated July 21, 2008, staff solicited comments on a draft of the present submittal from various State, County and Federal agencies. Responses were as follows:

Agency	Date Received	Comment
Department of Health – Environmental Division	N/A	No response
Department of Hawaiian Home Lands	7/24/08	No comments
DLNR – Aquatic Resources	N/A	No response
DLNR – Division of Forestry and Wildlife	7/25/08	No objections
DLNR – Historic Preservation	8/7/08	Historic properties will not be affected as proposed action is transfer of land to the County
DLNR- State Parks	7/22/08	Land Division should consider establishing the seaward boundary of the land to be set aside at the low, low tide

Agency	Date Received	Comment
DLNR - OCCL	N/A	No response
DOT – Highways Division	7/29/08	DOT's comments appear to relate to potential development of the park by the County. See Exhibit B attached.
County Planning Dept.	8/7/08	No objections
County Parks and Recreation	N/A	No response
County Dept. of Public Works	7/24/08	No comments
County Dept. of Water Supply	8/6/08	No objections
County Fire Dept.	8/11/08	No comments
County Environmental Management	7/22/08	No objections
U.S. Army Corps of Engineers	N/A	No response
Office of Hawaiian Affairs	9/3/08	OHA requests the inclusion of language in the set-aside and right-of-entry to reflect that the lands are ceded lands. Also, OHA requests that the State keep a detailed record of the ceded lands status of the subject parcel and its history. See Exhibit C attached.

With respect to the comments received from State Parks, staff concurs with the proposal to establish the seaward boundary in the executive order setting aside the property at the mean lower low water line. This will give the County management jurisdiction over the entire area instead of leaving Land Division with management responsibility for a strip of land seaward of the shoreline.

With respect to the comments from the Department of Transportation, staff responds that the present submittal only seeks to transfer management jurisdiction to the County. The County will need to address DOT's concerns and other environmental impacts if and when the County undertakes the development of the park.

The subject property surrounds parcel (3) 5-7-003:015, abutting it along the length of

its inland boundary. Parcel (3) 5-7-003:015 is owned by the United State of America and is designated as the Mahukona Lighthouse site. See Exhibit A. On August 21, 2008, comments were solicited from the United States Coast Guard on the draft of the present submittal, with no response being received.

The proposed set-aside to the County will be subject to the easements encumbering the land.

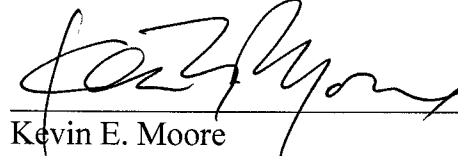
RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject land to County of Hawaii under the terms and conditions cited above, including the establishment of the seaward boundary of the subject land at the mean lower low water line, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a management right-of-entry permit to County of Hawaii covering the subject land under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and

- B. Such other terms and conditions as may be prescribed by the
Chairperson to best serve the interests of the State.

Respectfully Submitted,

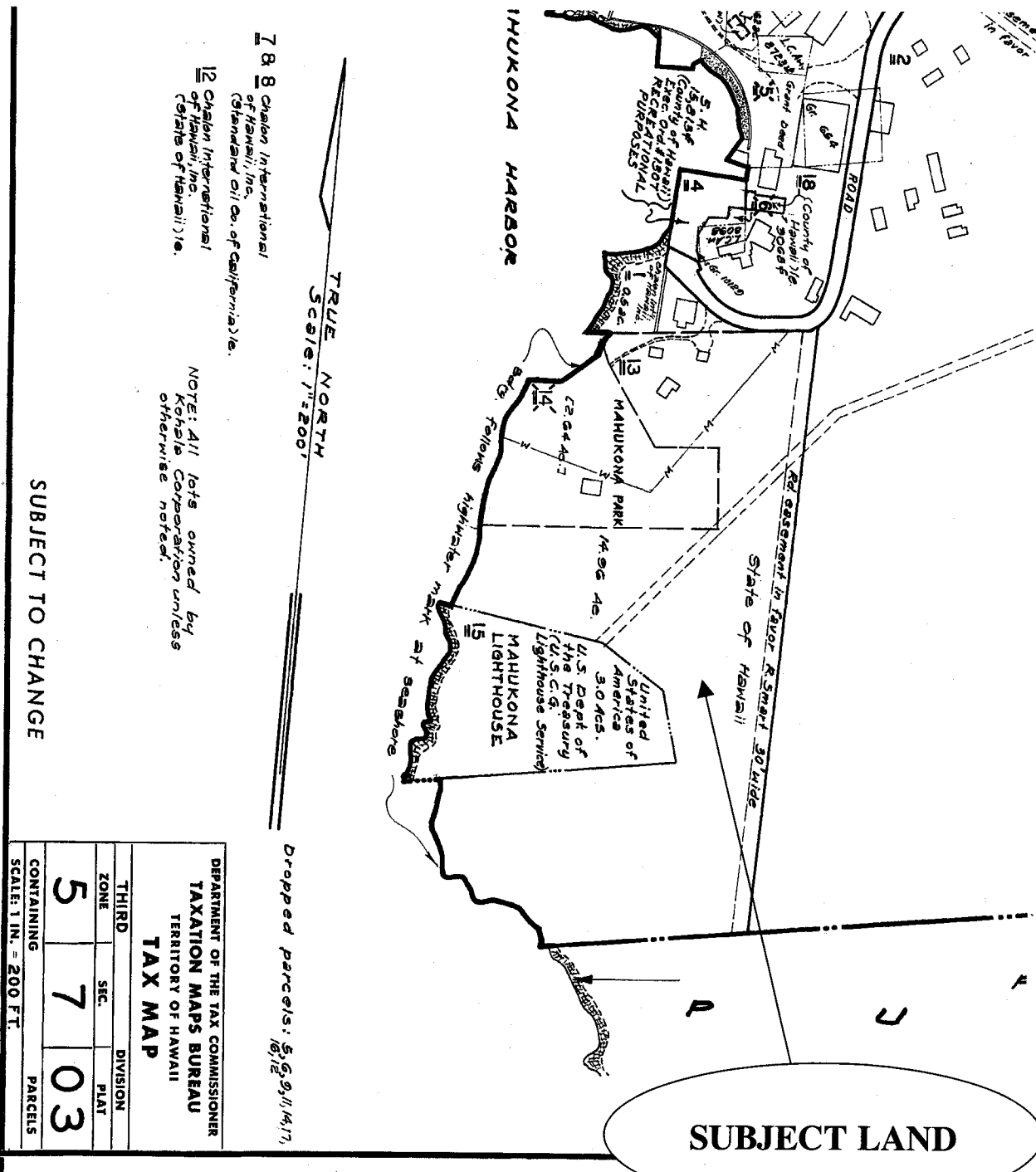


Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson




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**HIGHWAYS DIVISION
HAWAI'I DISTRICT
MEMORANDUM**

2008 JUL 29 PM 1:19

DATE: July 25, 2008

TO: Kevin E. Moore, District Land Agent, DLNR

FROM:  Stanley Tamura, Hawai'i District Engineer

SUBJECT: Request for Set Aside to the County of Hawaii for Mahukona Beach Park
and Issuance of Management Right of Entry
T.M.K. 3rd Div. 5-7-003: 013
Keaau-Pahoa Road, Route 130A Project No. S-0130(8)
Akoni Pule Highway
Mahukona, North Kohala, Hawai'i

Thank you for the opportunity to review and comment on this request. Please find attached a copy of the request.

We have the following comments to offer:

The scope of the proposed park will require a traffic impact assessment report (TIAR).

It is our understanding that division policy will require that a left turn pocket on this high speed highway shall be constructed for any proposed development.

Street lighting, drainage improvements, safety improvements, and ADA accessibility will also need to be addressed by the proposed development.

Highway Improvements required from this development shall be provided at no cost to the State and shall conform to Hawaii Statewide Uniform Design Manual for Streets and Highways, current AASHTO guides and the Specifications for Installation of Miscellaneous Improvements within State Highways.

The applicant shall comply with the National Pollutant Discharge Elimination System (NPDES) permit requirements for construction activity disturbing one (1) or more acres of total land area.

If you have any questions or require additional information, please call Mr. Clinton Yamada at 933-1951.

cc: HWY-HE

EXHIBIT B



2008 SEP -3 10 12

STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

HRD08/2342

August 28, 2008

Kevin E. Moore, District Land Agent
Department of Land and Natural Resources
Land Division
75 Aupuni Street, Room 204
Hilo, HI 96720

**RE: Request for comments on proposed set aside to the County of Hawai'i for
Māhukona Beach Park and issuance of management right-of-entry, North Kohala,
Hawai'i, TMK: (3) 5-7-003: 013.
State Ref. No.: 08HD-126**

Aloha e Kevin E. Moore,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated July 21, 2008. The state Land Board is considering transferring management of Māhukona Beach to the County through the issuance of a set aside and management right of entry. The County has been managing the park since the 1950s; however, its stewardship over the parcel has never been formalized. OHA has reviewed the project and offers the following comments.

OHA notes that these are ceded lands and requests assurances that language in the set-aside and right of entry will reflect that the lands are ceded and, therefore, that only management of the property can be transferred to the County.

Further, OHA asks that the state keep a detailed record of the Ceded Lands status of this parcel and its history. Ceded Lands hold a considerable amount of sentimental, historical and legal significance for Native Hawaiians and OHA. These lands were illegally taken from the Hawaiian Kingdom after the 1893 overthrow and later transferred ("ceded") by the United States government to the State of Hawai'i upon statehood. Today, the state holds the Ceded Lands corpus in trust for Native Hawaiians and the general public. OHA is supposed to receive a portion of all revenues generated on these lands.

EXHIBIT C

Kevin E. Moore
August 28, 2008
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From the Land Board proposal provided to us for review, it appears that subject property may be a combination of Ceded and non-Ceded lands. A detailed record of the history of Ceded Lands parcels such as this one will be invaluable in helping to track Ceded Lands to ensure that they are not alienated from the Public Lands Trust, in accordance with Office of Hawaiian Affairs v. Housing & Cmty. Dev. Corp., 177 P.3d 884 (Haw. 2008). In that case, the Hawai'i Supreme Court ruled that "the Apology Resolution and related state legislation, give rise to the State's fiduciary duty to preserve the corpus of the public lands trust, specifically, the ceded lands, until such time as the unrelinquished claims of the native Hawaiians have been resolved." (See the conclusion of Office of Hawaiian Affairs v. Housing & Cmty. Dev. Corp.) The Supreme Court then instructed the circuit court to place an injunction on the state from transferring "any other ceded lands from the public lands trust until the claims of the native Hawaiians to the ceded lands have been resolved." (*Id.*) The injunction was filed on June 4, 2008.

Thank you for the opportunity to comment. If you have further questions, please contact Sterling Wong by phone at (808) 594-0248 or e-mail him at sterlingw@oha.org.

'O wau iho nō me ka 'oia 'i'o,



Clyde W. Nāmu'o
Administrator

C: OHA Kona CRC Office